

C.R.S. 7-80-108

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COLORADO REVISED STATUTES

*** This document reflects changes current through all laws passed at
the First Regular Session
of the Sixty-Ninth General Assembly of the State of Colorado (2013)

TITLE 7. CORPORATIONS AND ASSOCIATIONS
LIMITED LIABILITY COMPANIES
ARTICLE 80. LIMITED LIABILITY COMPANIES
PART 1. DEFINITION AND APPLICATION

C.R.S. 7-80-108 (2013)

7-80-108. Effect of operating agreement - nonwaivable provisions

(1) (a) The operating agreement may contain any provisions for the affairs of the limited liability company and the conduct of its business to the extent such provisions are consistent with law. Except as otherwise provided in subsection (1.5), (2), or (3) of this section, an operating agreement governs the rights, duties, limitations, qualifications, and relations among the managers, the members, the members' assignees and transferees, and the limited liability company. Such provisions shall control over any provision of this article to the contrary except as set forth in subsection (1.5), (2), or (3) of this section. To the extent the operating agreement does not otherwise provide, this article shall control.

(b) A limited liability company is bound by any operating agreement of its members.

(c) An operating agreement may be entered into before, after, or at the time of filing of articles of organization and, whether entered into before, after, or at the time of such filing, may be made effective as of

the formation of the limited liability company or as of the time or date provided in the operating agreement.

(1.5) To the extent that a member or manager or other person that is a party to, or is otherwise bound by, the operating agreement has duties, including, but not limited to, fiduciary duties, to a limited liability company or to another member, manager, or other person that is a party to or is otherwise bound by an operating agreement, the duties of such member, manager, or other person may be restricted or eliminated by provisions in the operating agreement, as long as any such provision is not manifestly unreasonable.

(2) An operating agreement may not:

(a) (Deleted by amendment, L. 2006, p. 855, § 20, effective July 1, 2006.)

(b) Unreasonably restrict the rights of members and managers under [section 7-80-408](#);

(c) (Deleted by amendment, L. 2006, p. 855, § 20, effective July 1, 2006.)

(d) Eliminate the obligation of good faith and fair dealing under [section 7-80-404 \(3\)](#); except that the operating agreement may prescribe the standards by which the performance of the obligation is to be measured, if such standards are not unreasonable;

(d.5) Eliminate or modify the provisions of [section 7-80-801 \(1\) \(c\) \(I\)](#), except to extend the time set forth therein to a time not later than the first anniversary of the date of the termination of the membership of the last remaining member; or

(e) Restrict rights of, or impose duties on, persons other than the members, their assignees and transferees, and the limited liability company without the consent of such persons.

(2.5) (a) An operating agreement may contain one or more provisions concerning the enforcement, interpretation, construction, application, severability of provisions, integration, effect of parole evidence, and other matters with respect to the operating agreement or any of its

provisions.

(b) Unless otherwise provided in the operating agreement, if any provision of an operating agreement or application thereof to any person or circumstance is unenforceable or otherwise invalid under subsection (1.5) or (2) of this section or otherwise, the provision shall be limited, construed, and applied in a manner that is valid and enforceable, and, in any event, the remaining provisions of the operating agreement shall be given effect without the invalid provision or application.

(c) Unless otherwise provided in the operating agreement with respect to the unenforceability, invalidity, or application of any provision of the operating agreement under subsection (1.5) or (2) of this section, when it is claimed or appears to the court that any provision of the operating agreement may violate subsection (1.5) or (2) of this section, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect, to aid the court in making the determination.

(3) Unless contained in a written operating agreement or other writing approved in accordance with a written operating agreement, no operating agreement may:

(a) (Deleted by amendment, L. 2004, p. 936, § 3, effective July 1, 2004.)

(b) (Deleted by amendment, L. 97, p. 1503, 12, effective June 3, 1997.)

(c) (Deleted by amendment, L. 2004, p. 936, § 3, effective July 1, 2004.)

(d) Vary any requirement under this article that a particular action or provision be reflected in a writing.

(4) It is the intent of this article to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements.

HISTORY: Source: L. 94: Entire section added, p. 711, § 5, effective

July 1.L. 97: IP(3) and (3)(b) amended, p. 1503, § 12, effective June 3.L. 2003: (2)(d) amended, p. 2265, § 177, effective July 1, 2004.L. 2004: (2) and (3) amended and (4) added, p. 936, § 3, effective July 1.L. 2005: (2)(d) amended, p. 1203, § 2, effective October 1.L. 2006: (1) and (2) amended and (1.5) and (2.5) added, p. 855, § 20, effective July 1.

ANNOTATION

Agreement that required prior written approval of any assignment of a member's interest controlled over statute making interests assignable. *Condo v. Connors*, 271 P.3d 524 (Colo. App. 2010), *aff'd*, 266 P.3d 1110 (Colo. 2011).